

1 BARRY J. PORTMAN  
Federal Public Defender  
2 ELIZABETH M. FALK  
Assistant Federal Public Defender  
3 450 Golden Gate Avenue  
San Francisco, CA 94102  
4 Telephone: (415) 436-7700

5 Counsel for Defendant KENNETH KELLEY

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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 KENNETH KELLEY,

14 Defendant.

No. CR 05-125 PJH

STIPULATION AND  
[PROPOSED] ORDER

Hearing Date: Wednesday July  
20, 2005 at 1:30 pm

The Honorable Phyllis J.  
Hamilton

15  
16  
17 The undersigned parties stipulate and agree as follows:

- 18 1. A Motion to Suppress hearing is currently scheduled for July 20, 2005 at  
19 2:30 PM;
- 20 2. Counsel for Mr. Kelley will be out for two weeks, starting July 17, 2005,  
21 for a work-related trial training in Macon, Georgia;
- 22 3. Mr. Kelley is currently in custody;
- 23 4. Counsel jointly understand that after July 20, 2005, August 18, 2005 is the  
24 first date the Court is available to hear argument on the motion;
- 25 5. Counsel for Mr. Kelley is concerned because Mr. Kelley is in custody, and  
26 the pending motion is potentially case-dispositive. Counsel for Mr. Kelley  
27 does not want her training schedule to potentially result in Mr. Kelley's  
28 unnecessary detention for an additional month;
6. Counsel for the government does not believe that the pending motion will

1 be case-dispositive, but hereby stipulates to a changed schedule to address  
2 the potential concerns of defense counsel;

3 7. The motion schedule currently set before the Court is as follows:

4 Opening Motion due: June 22, 2005

5 Government Response due: July 6, 2005

6 Reply due: July 13, 2005

7 **Motion hearing: July 20, 2005;**

8  
9 8. Counsel for the defendant wishes to alter the briefing schedule as follows,  
10 which will permit the Court to hear the pending motion on July 13, 2005;

11 Opening Motion due: June 22, 2005

12 Response due: July 6, 2005

13 Reply due: Friday, July 8, 2005

14 **Motion hearing: July 13, 2005;**

15  
16 9. Counsel for Mr. Kelley understands that by shortening the briefing  
17 schedule, the Court may not be able to fully consider her Reply brief, as the  
18 Court will only receive said brief three court days prior to the motion  
19 hearing. Despite this fact, counsel for Mr. Kelley believes that shortening  
20 the briefing schedule to ensure it is heard prior to her departure on July 17,  
21 2005 is in her client's best interest, as he is in custody and is anxious to hear  
22 the results of the motion. Moreover, counsel for the defendant understands  
23 that the Court has largely considered the issues raised by the pending  
24 motion in the previous motion heard on June 8, 2005, and as such, a Reply  
25 brief may be unnecessary to assist the Court adjudicate the pending motion;

26 10. Counsel for Mr. Kelley understands that the proposed briefing schedule is  
27 outside of the normal briefing schedule for a Motion to Suppress as  
28 mandated by the Local Rules of this court. However, given the  
circumstances of counsel's schedule and the schedule of the Court, counsel

1 for Mr. Kelley greatly appreciates the Court's consideration of an  
2 abbreviated briefing schedule on the pending Motion to Suppress.

3 **IT IS SO STIPULATED.**

4  
5 DATED: \_\_ June 22, 2005 \_\_\_\_

6 /S/  
ELIZABETH M. FALK  
Assistant Public Defender

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9 DATED: \_\_ June 23, 2005 \_\_

10 /S/  
SUSAN R. JERICH  
Assistant United States Attorney

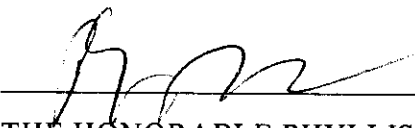
11 I hereby attest that I have on file all holographic signatures for any signatures indicated by  
12 a "conformed" signature (/S/) within this e-filed document.

13  
14 **[PROPOSED] ORDER**

15  
16 GOOD CAUSE SHOWN, and for the reasons stated herein, the briefing schedule  
17 on Defendant's Second Motion to Suppress the Fruits of an Unlawful Search, filed June  
18 22, 2005, shall be altered as stated in this stipulation. The hearing on said motion is  
19 hereby ADVANCED to July 13, 2005, at 1:30 PM.

20 **IT IS SO ORDERED**

21  
22 DATED: 6/24/05

23   
THE HONORABLE PHYLLIS J. HAMILTON  
UNITED STATES DISTRICT JUDGE

24  
25 *Reply brief shall be filed by 3:00pm*  
26 *on July 8, 2005 and a copy*  
27 *delivered to chambers.*  
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